

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(al 1316)

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DAMIAN DIMARCO, by his mother and
Natural guardian, LORI DIMARCO,
and LORI DIMARCO, Individually,

Plaintiffs,

-against-

WAL-MART STORES INC.,

Defendant.

Civil Action No.:
14 Civ.

NOTICE OF REMOVAL

Supreme, Suffolk
Index No.: 060351/2014

, J.
, M.J.

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TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK:

Defendant-Petitioner, WAL-MART STORES, INC. ("WAL-MART")
("Petitioner"), by its attorneys, SIMMONS JANNACE, LLP, ALLISON C.
LEIBOWITZ, ESQ., of counsel, upon information and belief,
respectfully petitions the Court, pursuant to 28 U.S.C. §1441, as
follows:

1. On January 21, 2014, the above-captioned civil
action was commenced and is now pending in the Supreme Court of the
State of New York, County of Suffolk. A trial has not yet been had
therein. A copy of the Summons and Complaint is annexed as
Exhibit "A". Petitioner has not yet served an answer to
Plaintiffs' Complaint.

2. The action seeks monetary damages for injuries
allegedly suffered by infant-plaintiff, DAMIAN DIMARCO. The
plaintiffs' Complaint sounds in negligence.

3. The action involves a controversy between citizens of different states, in that: (a) Plaintiffs are citizens of the State of New York; and (b) Petitioner is now, and was at the time the action was commenced, a corporation incorporated in the State of Delaware with its principal place of business in the State of Arkansas.

4. This action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332. There is complete diversity between Petitioner and Plaintiffs. In addition, the amount in controversy exceeds \$75,000.

5. This Notice of Removal is being filed within thirty (30) days after receipt by Petitioner of Plaintiffs' Complaint and within thirty (30) days after confirmation that the amount in controversy exceeds \$75,000.00.¹

6. Written notice of the filing of this Notice of Removal will be given to plaintiffs promptly after the filing of this Notice.

7. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Court of the Supreme Court of the State of New York, County of Suffolk promptly after the filing of this Notice.

¹ On or about February 11, 2014, defendant served plaintiffs with a Stipulation to Cap Damages at \$75,000. This Notice of Removal is being filed within thirty days of plaintiffs' refusal to execute the Stipulation.

8. Attached to this Notice, and by reference made a part hereof, are true and correct copies of all process and pleadings filed herein.

9. By filing this Notice of Removal, Petitioner does not waive any defense which may be available to it, specifically including, but not limited to, its right to contest *in personam* jurisdiction over Petitioner, improper service of process and the absence of venue in this Court or the Court from which this action has been removed.

WHEREFORE, Petitioner prays that the above-captioned action now pending in the Supreme Court in the State of New York, County of Suffolk, be removed therefrom to this Court.

Dated: Syosset, New York
February 14, 2014

Yours, etc.,

SIMMONS JANNACE, LLP

By: 

ALLISON C. LEIBOWITZ

Attorneys for Defendant

WAL-MART STORES, INC.

Office & P.O. Address:

115 Eileen Way, Suite 103

Syosset, New York 11791-5314

(516) 802-0630

TO: **GRUENBERG KELLY DELLA, ESQS.**

Attorneys for Plaintiffs

LORI DIMARCO-Mother

DAMIAN DIMARCO-Infant

Office & P.O. Address:

700 Koehler Avenue

Ronkonkoma, New York 11779

(631) 737-4110

File No.: 13-0577

Notice of Removal